FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 256

ALASKA STEAMSHIP COMPANY, *Petitioner*

v.

THE UNITED STATES, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

J. FRANKLIN FORT
Attorney for Plaintiff
529 Tower Building
Washington 5, D. C.

KOMINERS & FORT
Of Counsel

August 5, 1958

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Opinion Below and Jurisdiction	1
Question Presented	2
Statute Involved	3
Statement of Case	3
Argument in Support of Granting of Writ	5
A. The Court of Claims properly found that the statute and legislative history reflected the intent that the "statutory sales price" was the maximum price which Maritime was permitted to charge under the Ship Sales Act	5
(1) The language of the statute	5
(2) Legislative history	7
B. The court below erred in relying on inconclusive post-enactment legislative history to override the express policies of the Act revealed by the pre-enactment legislative history	10
C. Concerning voluntary payment	16
Conclusion	17
Appendix A (Decisions Below)	1a
Appendix B (Relevant Sections of the Statute)	8a

AUTHORITIES CITED

A. H. Bull Steamship Co. v. *United States*, 108 F. Supp. 95 (1952)	16
Barr v. *United States*, 324 U.S. 83, 90 (1945)	15
Brauer v. *United States*, 343 U.S. 112, 116 (1952)	15
Dichmann, Wright & Pugh, Inc. v. *United States*, 144 F. Supp. 922 (S.D.N.Y. 1956)	16
Girouard v. *United States*, 328 U.S. 61, 69 (1946)	15
Hagger Co. v. *Helvering*, 308 U.S. 389, 398 (1940)	16
Helvering v. *Hallock*, 309 U.S. 106, 119, 120 (1940)	15
Houghton v. *Payne*, 194 U.S. 88, 99, 100 (1904)	16

Page

Interstate Com. Com. v. *Railway Labor Association*, 315 U.S. 373, 378 (1942) 15
Jewell Ridge Coal Corp. v. *Local No. 6167*, 325 U.S. 161, 169 (1945) 16
Jones v. *Liberty Glass Co.*, 332 U.S. 524, 533 (1947) 15
Lewyt Corp. v. *Commissioner*, 349 U.S. 237, 240 (1955) 15
Louisville & Nashville R. Co. v. *United States*, 282 U.S. 740, 759 (1931) 16
Neuberger v. *Commission*, 311 U.S. 83, 89 (1940) 16
Order of Railway Conductors v. *Swan*, 329 U.S. 520, 529 (1947) 15
Phelps Dodge Corp. v. *National Labor Rel. Bd.*, 313 U.S. 177, 194 (1941) 15
Sims v. *United States*, 252 F. 2d 434, 438-439 (4th Cir. 1958) 15
Southeastern Oil Florida, Inc. v. *United States*, 119 F. Supp. 731 (1953), *cert. denied*, 348 U.S. 834 (1954) 16
Studebaker v. *Perry*, 184 U.S. 258, 268, 269 (1902) 16
United States v. *Great Northern Railway Co.*, 343 U.S. 562, 575 (1952) 14-15
United States v. *Guerlain, Inc.*, 155 F. Supp. 77, 82 (S.D.N.Y. 1957) 13
United States v. *Kirkpatrick*, 22 U.S. (9 Wheat.) 720, 735 (1824) 16
United States v. *Leslie Salt Co.*, 350 U.S. 383, 395 (1956) 15
United States v. *Missouri Pacific R. Co.*, 278 U.S. 269, 279, 280 (1929) 16

STATUTE

Merchant Ship Sales Act of 1946, 60 Stat. 41, 50 U.S.C. App. 1735 3
Section 3(c) 6
Section 3(d) 2, 3, 5, 6, 7
Section 3(e) 5
Section 4(a) 3, 5

HEARING

House Committee on Merchant Marine & Fisheries, Doc. No. 45, 79th Cong., 1st Sess., p. 3-4 ..... 11, 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No.

ALASKA STEAMSHIP COMPANY, *Petitioner*

v.

THE UNITED STATES, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner, Alaska Steamship Company, respectfully prays that a writ of certiorari be issued to review the decision of the United States Court of Claims entered in the above case January 15, 1958, as amended on petition for rehearing by order dated May 7, 1958.

OPINION BELOW AND JURISDICTION

The opinion of the Court of Claims was rendered January 15, 1958 (R. 281),* and an order dated

* References are to the certified transcript of record in the court below, filed with the Clerk pursuant to Rule 21(1) of this Court.

May 7, 1958 (R. 300) amending the opinion, was entered on petition for rehearing. Neither is yet reported. The opinion and order are contained in Appendix A hereto, pp. 1a-8a.

The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

In section 3(d) of the Merchant Ship Sales Act of 1946, 60 Stat. 41, 50 U.S.C., App. 1736(d), Congress fixed the "statutory sales price" at which, subject to specified upward or downward adjustments, Government vessels were to be sold to qualified applicants. The same section also specified a "floor price" below which the statutory sales price could not be reduced by the prescribed adjustments. Congress had assumed that the floor price in all cases would be lower than the statutory sales price. The reverse turned out to be the fact in the instant case and a few others. The Court of Claims held, although the statute directed otherwise, that the floor price superseded the statutory sales price because that is what Congress probably would have intended if it had considered this possibility.

The basic question presented is whether it was error for the Court of Claims to substitute an assumed intent for the intent which it found to be plainly spelled out in the statute and the legislative history. The Court, finding that Congress had failed to anticipate the specific facts presented by this case held, on the basis of post-enactment occurrences of dubious and inconclusive significance, that Congress would have intended the contrary of what the statute provided if the problem had been considered; this, notwithstanding

that the Court itself found the assumed intent to be contrary to policies of the Act.

The Government contends that at least $6,000,000 is involved in this question of statutory construction (R. 26, 248, 249, 254-5). There are several cases pending in the Court of Claims and elsewhere which may be affected by this case (R. 249).

STATUTE INVOLVED

The statute here involved is the Merchant Ship Sales Act of 1946, 60 Stat. 41, 50 U.S.C. App. 1735. Its relevant provisions are set forth in Appendix B hereto, pp. 8a-11a.

STATEMENT OF CASE

In July 1948, petitioner purchased a C1-M-AV1 type vessel called the TERMINAL KNOT from the United States Maritime Commission (hereinafter the "Commission") under the provisions of the Merchant Ship Sales Act of 1946 (hereinafter the "Act"). The Commission charged petitioner $693,862 for the vessel, which was the so-called "floor price" fixed by the Commission under the last paragraph of section 3(d) of the Act (App. B, p. 10a). Petitioner's contention is that the vessel should have been sold to it at the "statutory sales price" of $640,000, fixed by the opening paragraph of section 3(d) and by section 4(a) of the Act (App. B, pp. 9a and 11a), and that the Commission overcharged petitioner to the extent of $53,862.

Petitioner brought suit below, under 28 U.S.C. 1491, to recover this overcharge. The issue of statutory construction, together with the issue of "voluntary payment," were presented to the court below on the

Government's motion for summary judgment. The court found the issue of statutory construction against the petitioner, and dismissed its petition by decision dated January 15, 1958. The court did not deal with the issue of "voluntary payment." Petitioner filed timely motion for rehearing on February 14, 1958, which was denied May 7, 1958. In its order denying rehearing, the court deleted certain paragraphs of its earlier opinion and substituted revised paragraphs (R. 300-301).

The court said that the contentions of petitioner with respect to statutory construction were supported by the legislative history and by the language of the statute. However, finding that the precise problem involved had not been considered by Congress at the time the legislation was enacted, the court proceeded to look into the post-enactment legislative history in an effort to determine what Congress would have done if it had been aware of the problem. It decided that Congress would have intended to charge petitioner the higher price for the vessel.

Petitioner submits that the court was not authorized to speculate from post-enactment legislative history (which, in any event, was inconclusive) as to the intent of Congress to reach a conclusion which was inconsistent with the pre-enactment legislative history and also in contravention of the express language of the statute.

ARGUMENT IN SUPPORT OF GRANTING OF WRIT

A. THE COURT OF CLAIMS PROPERLY FOUND THAT THE STATUTE AND LEGISLATIVE HISTORY REFLECTED THE INTENT THAT THE "STATUTORY SALES PRICE" WAS THE MAXIMUM PRICE WHICH MARITIME WAS PERMITTED TO CHARGE UNDER THE SHIP SALES ACT

1. The language of the statute.

As pointed out above, the Merchant Ship Sales Act provides for two sets of prices—one referred to as the "statutory sales price," and the other as the "floor price." The "statutory sales price" is fixed by section 3(d) at 50% of the "prewar domestic cost," i.e., at 50% of the cost of building a vessel of a given type in the United States in 1941. The "floor price" is fixed by the last paragraph of section 3(d) at 35% of the "domestic war cost," *i.e.*, the wartime cost of constructing the same vessel in the United States, as defined by section 3(e) of the Act (App. B, p. 11a).

Section 4(a) of the Act (App. B, p. 11a) provides in unmistakably mandatory terms that, where a citizen-applicant is found to be qualified by experience, finances, operating ability, etc.:

> ". . . the Commission *shall sell* such vessel to the applicant *at the statutory sales price*."*

Section 3(d) of the Act (App. B, p. 9a) defines "statutory sales price" (unadjusted) as follows:

> "Statutory sales price," as applied to a particular vessel, means, in the case of a dry cargo vessel, an amount equal to 50 per centum of the prewar domestic cost of that type of vessel . . ."

The statutory sales price of the C1-M-AV1 type vessel determined under section 3(d) was $640,000, this being

* Emphasis supplied in all quotations unless otherwise noted.

50% of the prewar domestic cost of $1,280,000 determined according to section 3(c) (R. 21).

Section 3(d) also provides for upward and downward adjustments in the statutory sales price for the value of desirable features and depreciation. Petitioner's vessel neither contained nor lacked desirable features, and the only applicable deduction is therefore 5% depreciation, pursuant to section 3(d)(4). This would amount to approximately $90,000 since the vessel was two years and ten months old when purchased. This deduction would reduce the unadjusted statutory sales price of the vessel from $640,000 to $550,000, except for the application of the floor price provision contained in the last paragraph of section 3(d), reading as follows:

> "*No adjustment* . . . shall be made under this Act which will result in a statutory sales price which . . . will be less than 35 per centum of the domestic war cost . . ."

The preliminary domestic war cost of the C1-M-AV1 vessel was reported to Congress at approximately $1,700,000 (which, at 35%, would have produced a floor price of $612,000) (Plaintiff's Exh. 3). The final domestic war cost was determined, after passage of the Act, to be $1,982,464, and the floor, at 35% thereof, to be $693,862, which petitioner was charged (R. 21). The domestic war cost was thus $282,464 more than the domestic war cost figure reported to Congress, and the floor was $81,862 higher. This result was wholly unexpected and was due to abnormal war cost factors applied by the Commission as to a few types of vessels (R. 191-198). The floor was also $53,862 higher than the unadjusted statutory sales price of $640,000, the

maximum price reported to Congress (Plaintiff's Exh. 3). The floor was also about $143,000 higher than the statutory sales price of petitioner's vessel adjusted for depreciation.

The Maritime Commission's position was that the statutory sales price became "inapplicable" and the higher floor price controlled (R. 21). Thus, $53,862 was *added by Maritime to the unadjusted statutory sales price*, because the floor price unexpectedly exceeded the unadjusted statutory sales price. This administrative construction was precipitously adopted to forestall any possible contrary legal opinion on the subject (R. 217-220).

The "unadjusted statutory sales price" was $640,000, and the $90,000 of depreciation could not be deducted because the floor price was higher than the statutory sales price. Thus, no "adjustment" was made, and this was fully consistent with and gives effect to the floor price provision contained in the last paragraph of section 3(d), stating that "no adjustment . . . shall be made under this Act which will result in a statutory sales price" of less than 35% of the domestic war cost.

The floor thus served to prevent adjustments from reducing the unadjusted statutory sales price below the specified price, but it was obvious that it was never intended to raise the unadjusted statutory sales price. The use of the "no adjustment" language must be read to limit the scope of the floor price clause.

2. The legislative history.

Petitioner submitted to the court below exhaustive extracts from the legislative history (R. 164-198) con-

clusively showing that Congress intended that the *maximum* price to be charged for the vessels was the "statutory sales price." Petitioner also showed that there were three basic underlying policies behind the Act supporting its interpretation of the statutory language. These basic policies were that:

(1) It was the express policy of Congress that citizen shipowners be entitled to purchase war-built vessels at a price equal to 50% of foreign cost, in order that their initial postwar capital investment in ships would approximate that of their foreign competitors who could acquire vessels abroad at half of United States construction costs. The court below so found, stating (App. A, pp. 2a-3a; R. 282-3):

> "In the drafting of this statute, Congress recognized that the pre-war cost of building a dry-cargo ship in an American yard was about twice the cost in a foreign yard. If ships could be sold at all at American prices, the purchaser would be saddled with a capital investment which would handicap him in his operation in competition with foreign built ships.
>
> * * * * *
>
> In the discussion of the bill which resulted in the Merchant Ship Sales Act, there was emphasis on the purpose, noted above, not to require American enterprises to make a capital investment in their ships which would handicap them in their competition with foreign companies. H. Rept. No. 834, 79th Cong., 1st Sess., pp. 4-7. The 50% of pre-war domestic cost figure was regarded as the measure of the investment of foreign companies. If Americans were required to pay more than that 50%, that policy would, to that extent, be violated. . . ."

But the decision of the court below results in a cost of the vessel to petitioner in excess of that shown to be intended.

(2) It was the express policy of Congress that the extraordinary cost of shipbuilding during the war should not be imposed upon the postwar merchant marine, but should be borne by the Government. This the court below found, stating (App. A, pp. 3a-4a; R. 283):

> "In the discussion of the bill, the intent was expressed that the extraordinary cost of shipbuilding during the war should not be saddled upon the post war merchant marine, but should be borne by the Government. S. Rept. 807, 79th Cong., 1st Sess., pp. 2-3."

But the decision of the court below results in petitioner paying a price for the vessel based on war cost.

(3) The floor price provision was designed and intended only to limit downward adjustments in the statutory sales price of 50% of prewar domestic cost, and not to increase that cost. This the Court below also found, stating (App. A, p. 3a; R. 282-3):

> "In the consideration in Congress of this floor price provision, the discussion assumed that, in all cases, the 35% of domestic war cost would be lower than the 50% pre-war domestic cost, unless that 50% figure was reduced by class allowances, desirable feature allowances or depreciation. If such adjustments would have carried the price below the 35% floor, they would not be allowed to do so. The reduction process would have to stop at the floor."

But the decision of the court below permits the floor price to supersede and increase the statutory sales price.

The Court below recognized these positive indicia of legislative intent, but instead of interpreting the statute to conform therewith, the court resorted to speculation as to what Congress might have done if the exact situation had been presented to it, and came to the conclusion that Congress would have decided to reject these three underlying policies as to the few types of vessels which unexpectedly had floor prices higher than the statutory sales prices.

B. THE COURT BELOW ERRED IN RELYING ON INCONCLUSIVE POST-ENACTMENT LEGISLATIVE HISTORY TO OVERRIDE THE EXPRESS POLICIES OF THE ACT REVEALED BY THE PRE-ENACTMENT LEGISLATIVE HISTORY

We now come to consideration of the deviation by the court below from established principles of statutory construction. The court first attempted to place itself in the place of the members of Congress and speculated as to what Congress would have done if it had foreseen the instant case.* Secondly, it examined post-enactment legislative history and attempted to find out from post-enactment comment

---

* "When the members of Congress were discussing the financial misfortune which the Government was suffering in selling ships for approximately one third of what the Government had paid for them a year or two before, we feel reasonably sure that a member who foresaw the instant case and reminded his colleagues that perhaps in some cases the ships would be sold for even less than this one third of the cost, would have received little support from his colleagues. We think they would have made it plain that this should not happen, although by doing so they would have been, to a degree, departing from some of the policies of the Act." (R. 284)

what Congress would have intended had it been aware of the problem.*

With respect to speculation as to what Congress would have done in these circumstances, the court apparently relied upon references to legislative history cited by the Government indicating that Congress inserted the floor price in order to obtain maximum prices for the vessels, and for the purpose of preventing "give-away" prices. But these conclusions by no means follow the legislative history. This is so for two reasons. The first is that before the floor prices were even discussed or injected into the Act at all, Congress had after long deliberation fixed statutory sales prices, which they were specifically told would be *maximum* prices. The second is that the floor price concept was premised on the fact that the floors would all be *less* than the statutory sales prices,** and the

---

*"We think that this post-enactment legislative history is of considerable weight in showing what Congress intended, or what it would have intended, if it had, at the time of enactment of the Merchant Ship Sales Act, been aware of the problem." (R. 285)

**"REPRESENTATIVE KEOGH: Admiral, it is the impression of some, as a result of your testimony last Wednesday morning, when the thought of these floors was first suggested, that you otherwise indicated that draft No. 6 seemed to be a pretty good bill. My question is this: *Did you contemplate that the bill should have a statutory sales price fixed and also the floor below which that sales price could not be adjusted?*

ADMIRAL LAND: I thought that my comments were addressed to No. 7 when I said it was a good bill, because, in my judgment, it has to have a floor in it . . . If No. 6 had in it . . . the floor, why I thought it was a workable bill.

REPRESENTATIVE KEOGH: I find it difficult to reconcile in my own mind adopting the theory of statutory sales price, which is a fixed price, and then having a floor. *If you have a floor, the only*

entire discussion of the floors being minimum prices took place in the background of Congress' assuming the floor to be lower.*

From the foregoing, it is an inescapable conclusion that the statutory sales prices were not considered "give-away" prices (R. 177-183); and, *a fortiorari*, it is contrary to the congressional intent to construe the statute so as to permit the floor (or minimum) price to supersede the maximum price when the statutory language may be consistently construed to conform with the Congress' expressed intent. Congress was dealing with 4,000 vessels having an aggregate value of $15,000,000,000, and it cannot be assumed that Congress would have departed from the clearly expressed basic concepts of its surplus ship disposal plan in order to obtain a few thousand dollars more for the few vessels which unexpectedly turned out to have floor prices higher than the statutory sales prices.

---

effect of that floor is to limit the amount of the adjustments that can be made below the statutory sales price.

ADMIRAL LAND: That was introduced because of the fact that . . . you have got the statutory sales price with the depreciation to such a low mark that the Commission could not justify it . . .

* * * * *

REPRESENTATIVE KEOGH: Would you not accomplish the same objective if you specifically limit in the bill the amount of depreciation that could be allowed?

ADMIRAL LAND: Yes, that could be accomplished . . ."

House Committee on Merchant Marine & Fisheries, Doc. No. 45, 79th Cong., 1st Sess., pp. 3-4. The hearings on the floor price, which were held June 20, 1945, are reproduced in full in petitioners Exhibit 1, submitted to the Court of Claims and a part of the record submitted in support of this petition.

* See quotation from Court of Claims opinion, *supra*, p. 9.

As pointed out above, the court below was also in error in examining post-enactment legislative history in order to find endorsement of the Maritime Commission's policy of selling the vessels for the higher prices. The post-enactment legislative history shows that a subcommittee of the House of Representatives considered the advisability of an amendment to the Act to deal specifically with those instances where the floor price of a vessel exceeded the statutory sales price (R. 98-202, 293-295). No public hearings were held, and the Maritime Commission witnesses simply maintained that their interpretation of the law was the correct one. The court below relied on this legislative history to support its conclusion as to:

> ". . . what Congress intended, or what it would have intended, if it had, at the time of enactment of the Merchant Ship Sales Act, been aware of the problem." (App. A, p. 6a; R. 285)

It seems clear that the consideration of the advisability of an amendment to the Act has no relevancy to the intent of Congress in passing the Act. It has been said with respect to an amendment actually submitted to Congress,

> "If the failure of enactment of every amendment offered for the consideration of Congress were necessarily held to shed light on the legislation sought to be amended, the search for congressional intent would be endless and fruitless." *United States* v. *Guerlain, Inc.*, 155 F. Supp. 77, 82 (S.D.N.Y. 1957).

Post-enactment legislative history thus reveals mere acquiescence by three members of a congressional committee (R. 198-204) in Maritime's desire to charge more for the vessels. Such acquiescence cannot bind the

Congress which passed the Act, and cannot be assumed to represent its will or intent in the face of the pre-enactment history which reveals directly the opposite. If post-enactment comment on legislation may be relied upon to determine the rights of United States citizens under the laws of Congress, then the legislative process becomes precarious and will be hopelessly undermined.

There is no basis for concluding that if the normal legislative procedures had been followed in dealing with the problem presented in this case, allowing for full hearings and debate, either the committees of Congress dealing with the legislation, or Congress itself would have abandoned the policies which led to fixing the statutory sales price (50% of prewar domestic cost) as the base price. Rather, it must be assumed from the pre-enactment legislative history that Congress, after hearing industry, labor, Government, and other witnesses who testified before the Act was passed, intended to treat all purchasers alike insofar as basic price was concerned, and did not intend to make an inconsistent exception as to the few vessels which later turned out to deviate from the basic pattern. Speculation as to what Congress might have done had the matter been formally considered by Congress, cannot be accepted as the equivalent of congressional action.

The substitution of a highly speculative assumption as to what Congress would have intended for the unambiguously expressed intent is judicial legislation and manifestly improper. The "judicial function [is] to apply statutes on the basis of what Congress has written, not what Congress might have written". *United States* v. *Great Northern Railway Co.*, 343 U.S.

562, 575 (1952). Accord: *United States* v. *Leslie Salt Co.*, 350 U.S. 383, 395 (1956); *Lewyt Corp.* v. *Commissioner*, 349 U.S. 237, 240 (1955); *Bruner* v. *United States*, 343 U.S. 112, 116 (1952); *Barr* v. *United States*, 324 U.S. 83, 90 (1945). As this Court said in *Phelps Dodge Corp.* v. *National Labor Rel. Bd.*, 313 U.S. 177, 194 (1941):

> . . . courts . . . must guard against the danger of sliding unconsciously from the narrow confines of law into the more spacious domain of policy."

It was further error to ignore the fact that the specific situation involved in this case was fairly encompassed by the language of the statute, and certainly clearly encompassed by positive indicia in the legislative history. Where "Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislatures." *Barr* v. *United States*, *supra*.

Where Congress is not aware of the facts "it is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law." *Girouard* v. *United States*, 328 U.S. 61, 69 (1946). Accord: *Order of Railway Conductors* v. *Swan*, 329 U.S. 520, 529 (1947); *Interstate Commerce Commission* v. *Railway Labor Association*, 315 U.S. 373, 378 (1942); *Helvering* v. *Hallock*, 309 U.S. 106, 119, 120 (1940). See also *Jones* v. *Liberty Glass Co.*, 332 U.S. 524, 533 (1947); *Sims* v. *United States*, 252 F. 2d 434, 438-439 (4th Cir. 1958).

It is obvious that the administrative construction of the Commission (R. 218-220) is entitled to no weight,

since it was plainly erroneous, and motivated, not by examination of the intent of Congress, but only by a desire to charge the higher price. *Jewell Ridge Coal Corp.* v. *Local No. 6167*, 325 U.S. 161, 169 (1945); *Neuberger* v. *Commissioner*, 311 U.S. 83, 89 (1940); *Hagger Co.* v. *Helvering*, 308 U.S. 389, 398 (1940); *Louisville & Nashville R. Co.* v. *United States*, 282 U.S. 740, 759 (1931); *United States* v. *Missouri Pacific R. Co.*, 278 U.S. 269, 279, 280 (1929); *Houghton* v. *Payne*, 194 U.S. 88, 99, 100 (1904); *Studebaker* v. *Perry*, 184 U.S. 258, 268, 269 (1902); *United States* v. *Kirkpatrick*, 22 U.S. (9 Wheat.) 720, 735 (1824).

C. CONCERNING VOLUNTARY PAYMENT

Respondent argued in the court below that petitioner had "acquiesced," and voluntarily paid more for the vessel than the statute required, and that it was therefore barred from recovery. The court below did not deal with this point, and it is plain from decisions in other cases arising under the Ship Sales Act that it did not consider this defense available to defeat a claim founded on an overpayment of price fixed by statute. *A. H. Bull Steamship Co.* v. *United States*, 108 F. Supp. 95 (1952); *Southeastern Oil Florida, Inc.* v. *United States*, 119 F. Supp. 731 (1953); *cert. denied*, 348 U.S. 834 (1954); *Dichmann, Wright & Pugh, Inc.* v. *United States*, 144 F. Supp. 922 (S.D.N.Y. 1956). See also cases cited at R. 209-216.

CONCLUSION

The decision below involves not only a question of statutory construction affecting other cases involving substantial amounts of money, but, more importantly, is a precedent for judicial excursions into speculative, hypothetical and irrelevent areas of post-enactment legislative history and comment in search for a statutory interpretation admittedly contrary to the intent of Congress.

It is requested that this petition for writ of certiorari be granted.

Respectfully submitted,

J. Franklin Fort
Attorney for Plaintiff
529 Tower Building
Washington 5, D. C.

Kominers & Fort
Of Counsel

August 5, 1958